From: Dan Wright
To: Microsoft ATR
Date: 1/23/02 7:30pm
Subject: Microsoft Settlement

To: microsoft.atr@usdoj.gov
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To: Renata B. Hesse
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Under the Tunney Act, I wish to comment on the proposed Microsoft settlement.

I do not believe that the currently proposed settlement will be
effective in restraining the anti-competitive practices of the
Microsoft corporation nor do I believe this settlement is in the
public's interest.

In particular I believe that the proposed remedies have been drafted
too narrowly to effectively erode the current barriers preventing
independent software vendors from competing with Microsoft products.

Additionally the Proposed Final Judgment does not appear to have an
effective enforcement mechanism. Considering Microsoft's history of
violating decrees and their behavior during this proceeding this
seems a grave oversight.

I am very impressed with the revisions that have been made to the
proposed settlement. The Department of Justice has done a fine job
closing many of the loopholes that troubled me in previous versions.
I have full faith and confidence in your ability to craft a document
that will dramatically improve the software market.

I am an independent consultant who has provided advice and service to
over one-hundred companies. I have no loyalties to any vendor or
system. I am engaged in the practice of seeking out the best
solutions for my clients. To that end I have recommended solutions
based on products from Microsoft, Novell, cisco, Apple and others as
well as unix solutions including linux, FreeBSD, OpenBSD and Solaris.

In many cases I have advised clients to standardize on Microsoft
products even though the Microsoft offering was dramatically inferior
and more costly than alternatives. The dominance of Windows combined
with Microsoft's history of intentional barriers to interoperability
(as demonstrated in Caldera v. Microsoft) made Microsoft the only

safe choice. I have often counseled clients that while a system would work today Microsoft could make changes to their operating system that would shut down their network. An example (if memory serves) was Windows Service Release 1 (SR-1) which had extensive problems with Novell products. While Microsoft soon released a fix (SR-1a) the cost of the resulting downtime was huge.

The only remedy that I see being effective is to require Microsoft to publish the specifications of all their API's and file formats. Unfortunately this would force Microsoft to compete fairly and I doubt they would go along. I have persuasive arguments for how this would not unfairly hurt Microsoft and would generate a new renaissance among programmers. But since I don't think it will happen in my lifetime I will stick to more practical solutions in this letter.

I would like to suggest two more loopholes to address.

Part III, Section D reads in part:

"Microsoft shall disclose ..., for the sole purpose of interoperating with a Windows Operating System Product ... the APIs and related Documentation that are used by Microsoft Middleware to interoperate with a Windows Operating System Product."

I see two problems with this sentence.

The phrase "for the sole purpose of interoperating with a Windows Operating System Product" should be struck. This does not allow projects such as WINE <http://www.winehq.com/> and Lindows <http://www.lindows.com/> that are designed to create alternate environments for ISV's. This is a huge loophole which is also present in Section E.

The limitation of the proposal to "Middleware" is arbitrary. If anything this is a battle that has already been fought and won by Microsoft. The products defined as "Microsoft Middleware Product" in section IV does not address vital technologies such as .NET, C# or even Outlook (as differentiated from Outlook Express, which is a different product with a similar name.) While there is a provision that could apply the "Middleware" definition to anything Microsoft trademarks that clause is very broad and would not be enforceable. Even if an ISV (college student in his dorm room) decided to fight Microsoft's lawyers the war would be over before a judge saw the case. In most cases (such as the lawsuit Microsoft currently has against Lindows) the mere threat is enough to stifle competition.

Part IV Section J reads:

"Microsoft Middleware" means software code that

1.   Microsoft distributes separately from a Windows Operating
            System Product to update that Windows Operating
System Product;

2.   is Trademarked;

3.   provides the same or substantially similar functionality as a
            Microsoft Middleware Product; and

4.   includes at least the software code that controls most or all of the
            user interface elements of that Microsoft Middleware.

Software code described as part of, and distributed separately to
update, a Microsoft Middleware Product shall not be deemed Microsoft
Middleware unless identified as a new major version of that Microsoft
Middleware Product. A major version shall be identified by a whole
number or by a number with just a single digit to the right of the
decimal point.

I am not a lawyer, but this section disturbs me for two reasons.

"Microsoft Middleware" is distributed separately from the Operating
System. All of the products listed in Section K are distributed with
the Operating System. Are they "Microsoft Middleware" or not? If
their status depends on an alternative distribution method can
Microsoft make any product immune to this proposal my only bundling
it with Windows? Frankly I'm confused.

It seems to me that the status as "Microsoft Middleware" is
determined by version number. By this definition Windows XP is not a
major revision! If the first release of a new browser is "Internet
Explorer 12.00000000000000" is it a major revision?

I thank you for taking the time to read all the way through this. I
know I am not a great writer.

If you wish to hear more of my opinions you can respond by email or
call me at (650) 274-7755.

Sincerely,

Dan Wright

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